

What will it take for society to get the full benefits of commons-based innovation?

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Good morning. What do we need if we want to build better foundations for commons-based approaches to deliver innovation, creation and societal benefits ?

- Of course we need to **recognise their achievements** in various domains (software, knowledge sharing from free encyclopaedia to open access publications, open science for instance in genomics, creative commons, etc.) That's sort of done, so I will not redo it.

Here are a few other suggestions:

- Pushing for a **positive recognition of commons-based approaches in international norms**. WIPO will one day be WOKCIR, the World Organisation for Knowledge Commons and Intellectual Rights. It will be a long process to get there, so let's start early. The advantage of a positive recognition of knowledge commons in international norms is that it does not take away anything from anybody, but it creates obligations for norm setters in terms of assessing the effects of new norms on knowledge commons. And you know why it is possible to move in this direction ? Imagine a politician standing for election in front of an adversary who will tell : here is the person who opposed the recognition of voluntary gifts to humanity in international norms.

- **Rebalancing of incentives**. There are 2 aspects here. First why is it needed. Look at this table. The last column gives the ratio of stock capitalisation to turnover for various industry branches. See something ? It seems that the branches below are those who scream for more and stronger IPR ? Of course that must be because they are so innovative that everybody wants to copy them. Or is it ? Let's look more in detail in branches. In pharmaceuticals, a domain where patents have dominated the incentive scene for more than 30 years, all larger companies (with the temporary exception of Bayer who had a small problem that year) stand in the highest figures. Despite that, there is growing evidence of an innovation crisis. Yesterday Pfizer lost 25 billion dollars in stock capitalisation (from the 200+ billion where it was previously), that is about half FP7 total budget. That's because it had to stop clinical trials on its Torcetrapib (combined with Lipitor) anti-cholesterol drug², a combination that was meant to replace Lipitor, the single best selling drug in the world,

1 For the "Towards an economy of knowledge-sharing" panel of the *Intellectual Property and Knowledge Commons: the Impact of TRIPS and other legal systems on the economy, innovation and knowledge flows* conference , Brussels European Parliament, 4-5 December 2006. This text can be used under the terms of the Creative Commons Attribution ShareAlike license, <http://creativecommons.org/licenses/by-sa/2.5/>

2 The clinical trial was actually comparing the combination of Torcetrapib and Lipitor (atorvastatin) to Lipitor alone (comparing a new drug to the best existing one is a much more satisfactory way for assessing benefits than comparing only to placebos, however comparing it only to a drug whose monopoly is about to expire is another story). See also : Jerry Avorn, Torcetrapib and Atorvastatin — Should Marketing Drive the Research Agenda?, <https://content.nejm.org/cgi/content/extract/352/25/2573?ck=nck>, access reserved to subscribers to New England Journal of Medicine). I use this example to show how a pure focus on patentable drugs leads to a predominant search for drugs "replacing" those whose patents are soon to expire. For Pfizer, having a newly patented drug that "includes" the old one would have been even better, a true dream of rent seeking. Pfizer presented it itself in these terms: "As the market for statins matures with the introduction of generic versions, companies will be seeking ways to retain and build market share. A single pill containing a statin/non-statin combination may fulfil that role."
(<http://www.drugdevelopment-technology.com/projects/lipitor/>)

currently being prescribed to 5 times more people than it would according to the prescription scope of its original market authorisation. Doesn't it look like a small innovation target bias ? Yes, will you say, that's the specifics of pharmaceuticals where there is clearly something going wrong, but that's no reason to challenge the dominance of IPR incentives elsewhere. Let's look at ICT and media. The landscape is much more diverse there. But there is one common point. Companies whose immense profits and stock capitalization rest on IPR monopolies of course have lots of money to invest in R&D ... and marketing. But what type of innovation do they do? What brought me to consider the potential of knowledge commons is that I was so frustrated with the evolution of research targets in ICT. I had spent my career trying to develop tools to help people do useful and interesting things, and I was witnessing the best brains of the trade being hired to develop technology for stopping people from doing interesting things. That's called rent seeking, innovation for the benefit of keeping or extending one's market control and ability to set arbitrary prices. DRM is one of the pet names for it. A parenthesis, note that some companies, whose prototype is Google, have even higher stock capitalisation to turnover ratio. That's partly because of human madness but it also recognises that there is an immense value created by positive externalities in networks.

Innovative companies compete for capital, and they also compete for people. Companies that innovate from and towards the commons have no idea of reaching these pathological levels of monopoly-based profits or expectations of profits. There is clearly a biased system of incentives that limits commons-based innovation. Rebalancing it calls for simple wisdoms: breaking with 'one size fits all' property fundamentalism, and considering the proper incentives in various domains. The 3 corners of the innovation incentives triangle must be given their proper weight : restrictive rights, tax credits and subsidies or direct action by government. But that's only the "classical" aspect of the story. Another aspect lies in **setting the conditions of existence of people who contribute to the commons.**

- In the information domain, for instance in software, knowledge sharing or new media, innovation growingly arises from people and groups, from society. Societal innovation and creation has become a third component of the landscape in addition to government agencies and companies. For creative works it has been like that for as long as the concept of creative art existed, but it was recently hidden behind the industrialisation of culture. There is an amazing potential there, that we struggle to name, some people calling a many-to-many society, others a prosumer (*amateurs* in French) society, yet others speaking of ascending innovation. Now the existence of these people and groups should not be taken for granted. In many commons of today, their conditions of existence were created by policies of the past, that often are in crisis or undergoing redefinitions. We are now experiencing a change of scale of commons-related activities. Setting the conditions of existence for commons-based innovation and creation requires the mutualisation of funding (through both societal initiatives and government) of creation and innovation in renewed forms. James Love whom you heard yesterday has proposed several new schemes for the mutualisation of innovation or creation in the last years. We need to experiment them, to tune them. And to do that we can't afford to wear ideological blinkers regarding what is a permitted scheme, rejecting for instance flat rate licensing for peer to peer exchanges of music despite its proven benefits simply because it does not fit with the "control each act" view of how intellectual property should be enforced of some parties. Thank you for your attention.